**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION No. 378 of 2004**
**With**
**CRIMINAL REVISION APPLICATION No. 454 of 2004**

**For Approval and Signature:**

# HONOURABLE MR.JUSTICE C.K.BUCH

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | |
| 2 | To be referred to the Reporter or not ? | |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? | |
| 5 | Whether it is to be circulated to the civil judge ? | |

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**KALANBHAI GOVINDBHAI RATHOD - Applicant(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
MR HR PRAJAPATI for Petitioner No(s).: 1.
MR NC SOOD, LD.APP for Respondent No(s).: 1.
DS AFF.NOT FILED (N) for Respondent No(s).: 2.

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# CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

**Date : 25/08/2005**

**COMMON ORAL JUDGMENT**

1. The present two different Criminal Revision Applications have been preferred by the orig.

appellant as well as respondent of Criminal Appeal heard and decided by the ld.Additional Sessions Judge (F.T.C.No.6) Bharuch dated 15th May, 2004, invoking jurisdiction of this Court under Sections 397, 401 r/w. Section 482 of the Code of Criminal Procedure, 1973. The petitioner-accused of Criminal Revision Application No.378 of 2004 (hereinafter referred to as the 'petitioner-dealer') has also assailed the order passed by the District Collector, Bharuch dated 26th December, 2003, confiscating the entire stock of motor spirit (hereinafter referred to as the 'MS') (total 5431 litres) to the State and 10% of the stock which was found less than actually should have been found at the time of inspection worth Rs.2399/-. It is alleged that when the petrol and diesel pump of the petitioner-dealer was inspected, total 221 liters of diesel was found less then the one which ought to have been there. As per

the petitioner-State, the ld.Additional Sessions Judge has committed grave error of law as well as fact in exercising powers vested with the Appellate Court under Section 6(C) of the Act. It is contended by the petitioner-State that there is an element of arbitrariness in the order passed by the ld.Additional Sessions Judge, whereby he has reduced the stock of confiscated MS.

2. One of the main contention of the petitioner-State is that when the ld.Additional Sessions Judge was satisfied that the MS found was sub-standard and therefore, adulterated, not a single litre MS could have been returned to the petitioner-dealer/licence holder and in that situation return of any percentage of stock directly or indirectly from the total stock confiscated is bad and illegal. It is not a question of either enhancing or reducing the penalty but

it concerns with the effective distribution and sale of essential commodity like MS, of prescribed standard. The reasons assigned by the ld.Additional Sessions Judge are totally inadequate while allowing appeal filed by the petitioner-dealer in part and in no circumstances reduction is permissible. This is a case of improper exercise of jurisdiction vested with the Appellate Court. It is true that the Appellate Court can rewrite the decision and pronounce the judgment in accordance with law and the correct facts available on record. In such case, there is little element of exercising discretion as normally is being exercised by the Revisional Court in either enhancing or reducing the amount of penalty or punishment and, therefore, according to the State, the Revision Application filed by the State should be allowed and this Court should hold that the order passed by and the finding

recorded by the Collector confiscating total stock of MS is just, legal and proper and there was no need to interfere with the finding.

3. One of the submissions advanced by Mr.L.R.Pujari, ld.APP, is that before the Revisional Court, the petitioner-dealer cannot agitate fresh grounds which were not agitated before the Appellate Court or before the Collector.

4. Mr.H.R. Prajapati, learned counsel appearing for the petitioner-dealer, has taken me through the grounds raised in the memo of the Revision Application filed by the petitioner-dealer and it is submitted that substantial question of law can be argued before the Revisional Court and merely because the method of explaining the wrong committed by reasons how and why, both the lower Courts

committed error in placing the facts, can very well be argued before the Revisional Court when both the orders are subject to scrutiny before this Court. According to Mr.Prajapati, no fresh or new grounds have been agitated by the petitioner-dealer. It is true that confiscation of food grains, edible oil and other essential commodities vest with the Collector and it is not the say of the petitioner-dealer that neither any proper opportunity was given by the Collector nor he was made aware about the allegations levelled against him. According to Mr.Prajapati, before confiscation, the Collector is supposed to record his subjective satisfaction that there is contravention of any order or direction issued under the Act and that subjective satisfaction should be arrived at from the material available and a strict proof in the nature of evidence as to arrive at such

subjective satisfaction. It is well settled that the authority exercising even administrative jurisdiction is supposed to record subjective satisfaction then such subjective satisfaction must have been arrived on objective scrutiny of the facts and the evidence placed before it. There is no scope of using conjectures and surmises based on assumptions and presumptions. Of course, such authority can raise presumption provided it is statutorily permissible. Inference if is drawn by such authority must be on reasons that a prudent man even could have drawn such assumption and then conclusion. If there was no evidence for recording subjective satisfaction to the effect that the sample of MS drawn was in accordance with the norms and guidelines prescribed or the directions being followed by the State while dealing with the case of all the dealers and distributing/

manufacturing companies having some monopoly in the business of petroleum product gathered under the scheme of the Act, then no confiscation on the allegation of adulteration found can be made. Undisputedly, a petroleum product is to be either tested or analysed by the inspecting party then the inspecting party as well as the authority exercising powers vested with it under Section 6(A) of the Act, cannot ignore the scheme of various guidelines issued by the Petroleum Companies in consultation with the Government of India. The density, if, is tested manually, is not the only fact considered in the present case because the sample drawn by the inspecting party was sent for analysis to Forensic Science Laboratory (FSL) and when the Collector decided the matter, the report of analysis was very well available and the petitioner-dealer has reason to believe that the guidelines issued

by the Central Government or by the Petroleum Companies in consultation with the Central Government is with the Collector and he shall consider all relevant aspects. In the present case, according to Mr.Prajapati, the Collector as well as the ld.Additional Sessions Judge both have failed in appreciating this aspect and, therefore, confiscation of entire stock of MS by Collector is erroneous finding and the finding recorded by the ld.Additional Sessions Judge confiscating 50% of the total stock of MS is also bad in law and also on facts because grave error in appreciating facts made by the Collector, gets indirect confirmation by the Appellate Court. As per the facts narrated before the Court by the learned counsel appearing for the parties, Mr.Prajapati as well as Mr.L.R. Pujari, ld.APP, it reveals that the petitioner-dealer is the sole owner of the MS and HSD pump

which runs in the name and style of “M/s.Shital Petroleum” situated at Dhaba Chowkdi, Jambusar, Dist.Bharuch and he is an authorised dealer of Hindustran Petroleum Corporation Ltd. (for short 'HPCL'). Under approval of the State, he is running the said MS and HSD pump and there is an agreement between the petitioner-dealer and the HPCL and hence, there is no question of unauthorised selling. In view of the dealership agreement, a retail licence being No.208/1995 has been issued to the petitioner-dealer and it is being continued on permanent basis from 1st January, 2000.

5. On 11st January, 2003, a surprise checking was carried out by the Mamlatdar, Jambusar, at the pump of the petitioner-dealer and at that time of inspection, the Visiting Officer noticed certain irregularities. It is alleged that the stock of 11,000 litres of diesel

and 5431 litres of MS amounting to Rs.2,02,670-90 ps. was seized. The samples of MS and HSD were also drawn and the same were sent to the laboratory for analysis. As per the report, the MS analysed was not found according to the standard prescribed by the Government. As the sample was not in accordance with the standard prescribed, it was legitimately inferable that it was adulterated/ sub-standard and, therefore, ultimately on account of all these irregularities, the petitioner-dealer was served with a notice to show cause for the same. From the day one i.e. date of inspection, the Mamlatdar, Jambusar, had applied seal on the said pump of the petitioner-dealer and the dealer was stopped from selling the petroleum product and appropriate instructions were also given to the HPCL as to supply of petroleum products to the petitioner-dealer. A written

representation on 20th January, 2003 was made to the Mamlatdar, Jambusar for removing the seal and allowing the petitioner-dealer to operate his pump but as there was no positive response from the Mamlatdar, Jambusar, the petitioner moved the State Government by making representation on 12th March, 2003. Thereafter, the petitioner-dealer was served with a notice to show cause at a belated stage on 28th May, 2003 to the effect that the dealer should show cause as to why his stock of MS and HSD should not be confiscated to the State in exercise of powers vested with the Collector under Section 6(A) of the Act and also as to why retail licence issued to the petitioner-dealer should not be cancelled and also as to why the deposit amount should not be confiscated to the State Government. The petitioner was also detained under provisions of Prevention of Black Marketing Act, vide order of detention dated 21st June,

2003 and he was under detention and the licence was placed under suspension for 90 days by the District Supply Officer. While dealing with Special Civil Application moved by the petitioner-dealer being Special Civil Application No.12014 of 2003, this Court allowed the petition vide judgment dated 03rd October, 2003 and released the petitioner-dealer from detention. As 90 days' period of suspension of licence was over, the request to remove the seal and permitting the petitioner-dealer to operate his business was made, but as no positive decision was taken by the State Government or the State Authority, the petitioner-dealer moved a substantive petition being Special Civil Application No.15332 of 2003 before this Court and this Court granted stay against the order suspending licence on 21st October, 2003. The petitioner-dealer then was allowed to operate the pump on a condition. The

petitioner-dealer then filed Civil Application No.8779 of 2003 in the pending writ petition for appropriate directions and ultimately it was decided that the allegedly sub-standard stock of MS of about 5431 litres be stored into a separate container instead of underground tank till the confiscation proceedings initiated by the Collector, Bharuch under the notice to show cause dated 28th May, 2003, reaches to is logical end. Under the direction issued by the High Court, the Collector, Bharuch conducted hearing of confiscation proceedings. The petitioner-dealer was directed to appear in person before the Collector or through his agent at the time of hearing of the confiscation proceedings. Though a detailed representation was given to the authorities in response to the notice to show cause on 10th June, 2003, a written reply again was given with some details on 24th December, 2003 and submitted

written explanations. Undisputedly, before drawing sample, a density test – manual test was carried out by the inspecting team headed by Mamlatdar, Jambusar and there was no difference in density of MS at all and it was pointed out that the samples drawn are not tested within 10 days and, therefore, there may be some minor difference in the laboratory report, is a fact which is pointed out vide reply dated 24th December, 2003. A copy of the density register maintained by the petitioner-dealer was also placed before the Collector, but ultimately, the Collector found that because of irregularities and adulteration found in MS, the entire stock of MS lying in the tank deserves confiscation and for deficit stock of 521 litres of HSD, the amount equal to 10% of 521 litres of HSD be confiscated to the State. This very order was assailed by the petitioner-dealer by way of Criminal Appeal and the finding recorded

by the ld.Additional Sessions Judge is that the confiscation of 10% amount on account of density of 521 litres of HSD is legal and it does not need any interference. However, the ld.Additional Sessions Judge quashed the order confiscating the entire stock of MS and held that out of the entire stock 50% stock be confiscated. So far as this Court is concerned, the battle is not to have the actual stock of the MS but it centres around the amount equal to the stock because a sub-standard stock has been sent to the oil company after the orders of confiscation.

6. There is no allegation against the petitioner-dealer that the deficit in the stock of MS is beyond limit determined by the State. Now the question would be where are those norms under which the authority has inferred that the deficit in MS stock is within the prescribed limit. The ld. Sessions

Judge for this purpose ought to have raised query to the ld.Public Prosecutor appearing in the matter. This Court has reason to believe that the Collectors are instructed to follow the guidelines issued by the State Government as well as the Union of India. On the date of inspection, the officers had noticed the deficit of 137 litres of MS in the entire stock of MS but the same has not been treated as irregularity. According to Mr.Prajapati, as the same was within the limit of the turn over of the stock, it is considered to be within prescribed limit, then there was no reason to reject the calculation placed by the petitioner-dealer as to sale and purchase (turn over of stock of HSD). The entry and exit of the stock was ascertainable from other documents and exact record from the registers can be said to be a very technical aspect. Such irregularity may occur because the employees working at the

pump of the petitioner-dealer may not have remained vigilant and meticulous. This could have been treated as minor irregularity of not maintaining exact record in a given period of time, otherwise the stand of the petitioner-dealer could have been falsified by referring to other documentary evidence i.e. bills of purchase and sale and stock lifted by the petitioner-dealer from the company outlet.

7. The learned counsel appearing for the parties have submitted that the Appellate Judge either ought to have upheld the finding confiscating the entire stock of MS or released the entire stock of MS or there was no scope in present set of facts to make reduction of percentage of the stock confiscated.

8. It is argued by Mr.Prajapati, learned counsel appearing for the petitioner-dealer that the ld.Additional Sessions Judge has failed to appreciate that as such there is no breach committed by the petitioner-dealer, no action was, therefore, required to be taken against him. The ld.Additional Sessions Judge has also failed to appreciate that confiscation of 50% stock of MS is a very harsh punishment in the facts and circumstances and some token penalty, even if the say of State is accepted, could have been imposed or for that purpose appropriate direction to the concerned authority could have been given to examine the issue afresh from the angle placed before the ld.Additional Sessions Judge.

9. For the present judgment, some facts are required to be stated to appreciate the submissions of Mr.Prajapati because the case

of the petitioner-dealer stands on the backbone of the submissions made on the technical aspects in the background of the norms accepted and prescribed by the Petroleum Manufacturing Companies and Dealers, approved and accepted by the Government of India. As per the facts emerging from record, the sample of MS was drawn on 11st January, 2003. It came to be tested by FSL of State Government on 3rd March, 2003. As per the finding recorded by the FSL, at 100° centigrade, the recovery was 38.8%, as against the prescribed standard between 40 to 70%. The tolerance limit of recovery volume is tested as 4% of the material seized on 100° centigrade. The product of MS should be tested within 10 days. There is a Joint Committee of Director manufacturing of I.O.C., HPCL, BPCL-manufacturing companies of petroleum products and Director Production of I.B.P. And four

representations of the Federations of All India Petroleum Traders' and Sale Committee constituted is authorised to look into all aspects of quality and quantity issue relating to retail sale of the petroleum products. This Committee has held various meetings and in one of the meetings convened on 21st August, 2001, certain issues were discussed. The petitioner-State does not dispute that a core group which consisted of high rank officers and experts of different oil companies owned by Central Government and other dignitaries have decided detailed procedure to be followed for drawing and retention of MS and HSD samples at retail outlets from the tank or underground tanks and other receptacles. The Clause 2.4 of the finding recorded by the Committee of core group is important whereby it is decided that the sample drawn should be sent to the laboratory for analysis within 10 days of

withdrawal and the laboratory should carry out tests as specified and the finding should be made available with reports within a period of 10 days of the receipt of the sample at laboratory and as per Clause 2.6 of the report – core group decision, the quality of product as represented by the sample is found more relevant. I would like to reproduce both the relevant parts, which are as under :

> “2.4 The sample(s) shall be sent to the Lab within 10 days of drawl. The Laboratory shall carry out tests as specified under enclosure(c) and make available the reports within 10 days of receipt of sample at laboratory, should sample fail to meet the specification, an explanation of the dealer shall be called for in writing within 7 days,

giving details of failure and enclosing copies of the test reports.

XXX XXX XXX XXX

2.6 The quality of product as represented by the samples will be ascertained as under :

The retention sample of the Tank Truck shall be tested.

a) If the Truck sample passes, the dealer retention sample will be tested. And if it passes, the dealer would not be held responsible. If it fails, the dealer would be held responsible.

b) If Tank Truck sample fails, the

better of the two results of the RO samples will be compared with T/T sample results. In case, they are within tolerance limits (enclosure-d), the dealer will not be held responsible.

c) In case the test results are not within tolerance limit (as per enclosure-d), the dealer will be held responsible.

d)In case the transporter's sample has failed, supply location sample would be tested. If the variation in test results is beyond tolerance limits (enclosure-d), transporter will be held responsible.

***ENCLOSURES-C & D***

***MOTOR SPIRIT:***

| Sr. No. | TEST | TEST METHOD | TOLERANCE LIMIT AS COMPARED TO REFERENCE SAMPLE |
|---|---|---|---|
| 1 | APPEARANCE | VISUAL | -- |
| 2 | COLOUR | VISUAL | -- |
| 3 | DENSITY @ 15° C, Kg/M³ | P-16 | 0.0030 |
| 4 | DISTILLATION | P-18 | |
| | IBP, °C | | 7 |
| | RECOVERY UPTO 70°C, %v | | 4 |
| | RECOVERY UPTO 100°C, %v | | 4 |
| | RECOVERY UPTO 180°C, %v | | 4 |
| | FBP, °C | | 5 |
| | RESIDUE, %v | | |
| 5 | EXISTENT GUM, g/M³ | P-29 (Air jet solvent washed) | 37 |
| 6 | RON* | P-27 | 1 |

***HIGH SPEED DIESEL:***

| Sr. No. | TEST | TEST METHOD | TOLERANCE LIMIT AS COMPARED TO REFERENCE SAMPLE |
|---|---|---|---|
| 1 | APPEARANCE | VISUAL | -- |
| 2 | COLOUR | VISUAL | -- |
| 3 | DENSITY @ 15° C, Kg/M³ | P-16 | 0.0030 |
| 4 | DISTILLATION | P-18 | |
| | 85% vol recovery at °C | 330°C | 8 |
| | 95% vol recovery at °C | 370°C | 5 |
| 5 | Kinematic Viscosity, Cst, At 40°C | P-25 | 0.1 |
| 6 | Flash point, ABEL °C | P-27 | 1.5 |

10. The report of the FSL states that the density of MS was found 38.8% at 100° centigrade that ought to have been anything between 40% to 70% as per IS-2796-2000 standard required for Motor Gasoline. The difference was of 1.2% and when as per the manufacturing company, the tolerance limit is 4% then the Collector as well as the ld.Sessions Judge ought to have recorded that as the density is within negligible limit. The sample drawn on 11th January, 2003 was analysed undisputedly on 04th April, 2003 because the forwarding letter dated 10th April, 2003, indicates the said date. There is no reference of date in the report prepared by analyst Mr.A.V. Hingrajiya (pg.30). The report of Public Analyst dated 04th April, 2003 indicates that they had started analysing the sample in question on 03rd March, 2003. So even for the sake of argument, if it is accepted that the sample was analysed on 03rd March, 2003, even

then it was a belated stage and in this fact situation, this Court can ably infer that the findings of facts recorded by both the lower authorities i.e. Collector and the ld.Sessions Judge, are contrary to the facts. It appears that both the authorities have not at all cared to apply their mind and the same has resulted into miscarriage of justice.

11. The say of petitioner-dealer before the Court is that in view of these two above clauses, there was no cogent evidence available on record under which finding could have been recorded that there was adequate material before the Collector to infer that MS was sub-standard.

12. The laboratory report only was considered by the Collector which is at pg.30. On careful reading of the report relied upon by the Collector and then by the ld.Additional

Sessions Judge, it clearly reveals that six different tests were carried out and the sample had gone through five out of six tests. The Court is not in agreement with the submission of Mr.L.R. Pujari, ld.APP, that the decision of the Joint Committee and then the guideline issued for drawing samples is not binding to the State and the Collector can ignore such guidelines. He is supposed to see that the essential commodity of standard quality is made available to the public at large. Various methods are adoptable and so far as MS is concerned, it can be decided by : (1) appearance, (2) Colour, (3) density i.e. 15° C, Kg/$m^3$, (4) distillation, (5) existent gum, (6) RON; the sample was tested by the laboratory accordingly. All throughout India, these guidelines are being observed and followed. It is argued by Mr.Prajapati that the Collector has even ignored the guidelines

issued by the State Government for taking disciplinary action for the offence committed by the dealer of MS/HSD pumps vide Circular dated 08th April, 1999. A copy of the said circular is shown to the Court and there is no conflict or inconsistency as to the decision of the core group taken in reference to drawing and retention of MS and HSD samples by retail outlets from tanks, etc. and enclosure (C) shown to the Court by Mr.Prajapati. There is prescribed procedure for handling of product at retail outlets by the dealer. When it is emerging from record that the sample was not properly drawn as per the guidelines issued in conformity with the policy of the State Government or the same was not either analysed or tested as per the norms and method or in a given prescribed time limit, then the finding arrived at the end of test results or analysis cannot be used against the licence holder or person

operating retail outlets. IF the say of Mr.L.R. Pujari, ld.APP, is accepted then it would give rise to lot of confusion amongst dealers and distributors and especially to whom who are running chain of retail outlets within the State or inter-State.

13. The known fact is pointed out to the Court that most of the petroleum products manufacturing companies are owned or controlled by the Government of India and even private manufactures to some extent are being regulated by the Government of India and to keep harmony amongst the dealers of petroleum products, either manufacturers and/or marketed by the Government owned companies, marketing discipline guidelines are being issued. It is rightly argued by Mr.Prajapati that each retail outlet dealer has reason to believe that the officers of the State in-charge of affairs as to the sale

and marketing of petroleum products are aware of such marketing discipline guidelines. In the month of May, 2001, such guidelines were decided and circulated amongst all the retail outlet dealers. It is true that such guidelines have no statutory force but one may not forget that such guidelines came be compared with the arrow marks shown on some unknown or complicated pathways. So a passerby if adopts to follow these arrows, even ignoring other information, he cannot be blamed to commit certain minor mistakes. These marketing guidelines touch certain major aspects :

(i) procedure of handling with petroleum products at retail outlet.

(ii) procedure for sale, distribution and supply of kerosene under Public Distribution System.

(iii) Sampling procedure.

(iv) Details of penal actions for minor or major irregularities, if found committed.

(v) Modifying the minor and major irregularities.

The collector or the ld.Sessions Judge has committed error in recording finding of fact. Keeping these guidelines in background, obviously, it can be evaluated and argument of Mr.L.R. Pujari, ld.APP, cannot be accepted mechanically that two concurrent findings of facts should not be disturbed by the revisional Court in view of limited jurisdiction. The State is having statutory privilege / right to 100% stock seized but this depends on the type of irregularity or number of irregularities and also one aspect as to whether the offending retail outlet dealer is frequently committing such irregularities or not. In the present case,

evenCollector has accepted to some extent the explanation given by the petitioner-dealer as to deficit in the stock of diesel and it is not the finding that the deficit was much higher than the expected and permitted under policy guidelines issued by the Stage Government from time to time and therefore, the authority has reason to believe that this stock which was found less must have been used in the activities of adulterating other petroleum products like MS (petrol).

14. The major aspect has not been considered, it seems that the deficit of 521 liters of HSD was not made the permissible limit fixed by the State of Gujarat. To substantiate this submission, Mr.Prajapati has drawn my attention to the Circular dated 08th April, 1999, No.PTL/1097/1911/B and it is the policy of the Government that shortage upto 40% of the average annual sale even if it is found

during inspection, no action shall be taken against the petitioner-dealer. If the shortage is in excess of 0.40%, stock to the extent of shortage beyond 0.40% only should be seized and not the entire stock. In some cases, the Government has decided that even while taking actions certain percentage of forfeiture of security deposit can be said to be adequate punishment and the Government has decided that the security deposit in respect of stock variation (shortage) made 1% in the case of MS and 0.40% in the case of HSD should 25% of forfeiture of security deposit at the first instance. At the second instance, 50%, if it is found within three years and at the third instance, if it is found within five years. When such norms are prescribed by the Government and followed in number of cases then confiscation of 10% of stock at the first instance of shortage found can be said to be a discrimination made by

the State amongst retail outlet dealer is also a question. However, Criminal Court is not supposed to enter into this area. While evaluating the finding recorded by the regulatory authority and confirming authority, the Court is supposed to decide whether penalty imposed by the Collector is contrary to policy of the Government. In the present case, Mr.Prajapati has pointed out that annual sale of immediate previous year, considering the date of inspection, the petitioner had purchased and sold 9,34,526 litres of HSD and 0.40% of this stock would be much higher than the shortage found and, therefore, there was no reason for rejecting the stand taken by the petitioner before the Collector and in turn before the Sessions Court. It appears that applying the norms even decided by the Government, no irregularity can be said to have been committed. The alleged variation found

cannot be said to be an abnormal variation in the stock or abnormal shortage and as per the policy of the Government, there was no scope for seizure or confiscation of even one litre of HSD. It will be difficult for this Court to accept that this type of circulars and the company policy adopted by the State can be ignored and while exercising powers as authority under the Essential Commodities Act, the District Head can act as per his wish and will. The ld.Sessions Judge has grossly erred in not appreciating this vital aspect of the matter.

15. So far as the alleged irregularity qua the stock of MS is concerned, it relates to the quality of the MS which was being sold when the pump was inspected. But in view of above discussion made by the Court in para :8, it appears that the sample was tested after the prescribed period. In the case of either HSD

or MS, the sample taken for analysis by any authority normally should reach to the laboratory within 10 days from the date of drawl.

16. One of the submissions of Mr.N.C. Sood, ld.APP, is that these guidelines are binding to the companies which has issued to regulate distribution and quality control amongst its own dealers and it is not binding to the State officials. This argument prima facie appears to be logical argument but if the same is accepted, then it may happen that a sample certified as upto the standard by the company may not stand to the test of FSL and the same can happen vis-a-versa. The Government may declare the very sample as sub-standard as per the policy and reject the sample and may suppose to cancel the dealership.

17. In such a complicated fact situation, the argument that when the Government has not prescribed any norms as to the drawl of sample and its analysis then the guidelines issued by the Government owned companies country vide shall have to be accepted, has some relevance when the authorities are contemplating to impose penal action against the offending retail outlet dealer. Here in the present case, the dates are clear and it is apparently clear that the sample drawn has not been analysed in a prescribed time limit. The same was to reach within 10 days to FSL and the same ought to have been tested within next 10 days and the dealer was to be communicated about result or the finding recorded by the laboratory. On the contrary, it would be advisable for the State authority to convey the finding to the concerned oil company at the earliest so that the company can cross-check if it so desires and the

large scale scam of adulteration is being committed then the company can take appropriate steps to fix the liability. The exceptions are also there in the guidelines and it is said that generally the sample should reach within 10 days and tested within next 10 days. However, during special drive, the laboratory may accept samples upto 15 days after drawl and the tests should be completed within 30 days from the date of receipt of the sample. In the present case, the difference of time gap is of more than 15 days and it is not the case that the sample taken from the pump of the petitioner-dealer was drawn under a special drive and laboratory was overburdened in analysing the same and when the difference of percentage found is very minor/negligible in one of the standards of various tests, then the fact that the sample is tested late i.e. after 10 days cannot be ignored. The ld.Sessions Judge

ought to have observed that the finding recorded by the laboratory cannot be accepted for taking penal action against the retail outlet dealer. The State Government ought to have simply conveyed the finding to the company through the Collector but confiscation of MS stock and that too of huge amount cannot be said to be a legal or proper finding.

18. Mr.N.C. Sood, ld.APP, has placed reliance on one decision in the case of **Narendra Kumar Maheshwari v. Union of India and others, reported in 1990 SCC (supp) 440**, wherein the Apex Court has held that every instrumentality of State should fulfill its own right and should not trespass into the roads of others. When the State Government is regulating the quality and supply of an essential commodity, then the administrative action taken should not be disturbed and non-

statutory guidelines framed by the statutory authority or the Government are not enforcible against the authority or the Government. According to Mr.N.C.Sood, the doctrine of legitimate expectation should not be applied in each case and the competent authority might depart from these guidelines where permitted exercise of his discretion was warranted. Impliedly the say of Mr.N.C.Sood, ld.APP, that the State Government should be permitted to apply the rule of thumb and may ignore certain permissible limits or relaxation made by the Government itself, if the Government desires to take action and impose penalty even by ignoring the element of discrimination. I am not accepting this proposition of law placed by Mr.N.C.Sood, ld.APP, in view of the above detailed discussion. Especially when reasonable good explanation from the person delinquent was tendered well in time to the

authorities.

19. The second decision cited by Mr.N.C. Sood, ld.APP, is in the case of ***Home Secretary, U.T. of Chandigarh and another v. Darshjit Singh Grewal and others, reported in 1993(4) SCC 25,*** the Apex Court has held that the rule of promissory estoppel cannot be invoked against a statutory provision or to support an ultra vires acts or to compel the Government or public authority to carry out promise which is contrary to law. In the present case, the Government cannot permit the petitioner to sell MS of inferior quality and it is accepted that the same is adulterated. In such a case, when the stock is not otherwise returnable to the company, then the confiscation was the only alternative. But this argument is not found attracted because if the Government is of the view that it would not tolerate difference of

even 0.1% in any of the four tests, which are required to be carried out while analysing MS, then money equal to the said entire stock could have been confiscated. On the contrary, the Government could have asked to the company to take back the entire stock of the petitioner-dealer and adjust the account when it was found that the alleged deficiency is negligible. In the present case, the rule of promissory estoppel would not be applicable. But the petitioner-dealer legitimately says that as per the standard prescribed and the relaxations made in the guidelines, his stock ought not have been declared as not in accordance with prescribed standard; otherwise, no such relaxations could have been given by the Government companies and accepted by the State Government. The companies could have been prevented from issuing and implementing such guidelines. On the contrary, the ratio of the decision in

the case of ***Comptroller and Auditor General of India and others v. Mohanlal Mehrotra and others, reported in 1992(1) SCC 20,*** would help the petitioner-dealer, whereby the Apex Court has observed that the administrative order issued in the name of President of India ought to have been complied with and in the present case, it appears that the guidelines issued by the State Government and the petroleum companies to its dealers are not contrary to the statutory rules but they are supplementary guidelines carving out a policy.

20. It is true that the jurisdiction of the revisional Court is limited and the revisoinal Court cannot rewrite the judgment evaluating the facts de novo but it is also settled that if manifest error in evaluating the facts and recording findings of facts is noticed, then the revisional Court cannot

ignore it. Of course, in the case of **Devikadevi wife of Premjibhai Ruparel v. State of Gujarat and another, reported in 1983(1) GLR 215,** this Court was dealing with a petitoin under Article 227 of the Constitution of India but it is observed that manifest error can be corrected by the High Court. It is not the say of even State that the Revision Application filed by the petitioner-dealer is not maintainable; on the contrary, the State itself has preferred one Revision Application against the very decision i.e. Criminal Revision Application No.454 of 2004. So if any finding of fact suffers from any manifest error or the findings are such which cannot reasonably be arrived at in light of the other facts on record, then such findings can be held to be erroneous, saying there is a gross error in evaluating the evidence available on record. Placing reliance on one decision in the case

of **Union of India and another v. Amrik Singh and others, reported in 1994(1) SCC 269,** is argued by Mr.Prajapati that the Apex Court has held that a particular administrative guideline can be held to be a valid on facts. In this cited decision, the conditions of service of persons working in the department of Comptroller and Auditor General were under scrutiny under Articles 148(5)(5) and 309 of the Constitution of India and the Apex Court held on fact that the administrative instructions issued by the Comptroller and Auditor General are valid. The statutory recruitment rules made by the president after consultation with the Comptroller and Auditor General, statutory administrative instructions issued by the Comptroller and Auditor General himself cannot be said to be invalid. It is observed by the Apex Court that the Comptroller and Auditor General was competent to issue statutory directions. In

the present case, when it appears that the State of Gujarat was competent to issue Circular dated 08th April, 1999, whereby it has issued guidelines for taking disciplinary action for the offence committed by the dealers of MS and HSD pumps cannot ignore the Circular saying that it is not binding to the State and the same is contrary to law or statutory orders.

21. In view of above, the Court is of the view that the order of confiscation of entire stock of MS is not found legal and valid. In the same way, the confiscation of stock of HSD is also not found legal and valid and therefore, the forfeiture of amount of equal value is also found invalid because the report of FSL (Forensic Science Laboratory) in the case of MS would not have been considered at all for the purpose and even otherwise the alleged deficiency was

negligible and permissible within the prescribed limit and the deficit in the stock of HSD was also permissible in view of yearly turn over.

22. So in view of above observations and discussion, the Revision Application filed by the State being Criminal Revision Application No.454 of 2004 is hereby dismissed and the Revision Application filed by the petitioner-dealer being Criminal Revision Application No.378 of 2004 is hereby allowed. The order of confiscation of MS (petrol) as well as HSD (diesel) is found bad. This is a case of improper maintenance of books of accounts and for such irregularity or error in maintaining the accounts meticulously, sufficient punishment would be the forfeiture of the amount of deposit. So the Government is entitled to forfeit the amount of deposit and direct the petitioner-dealer to pay fresh

amount of deposit as per the recent norms to the Government.

23. Rule is made absolute so far as Criminal Revision Application No.378 of 2004 is concerned and the same is discharged so far as Criminal Revision Application No.454 of 2004 is concerned.

**(C.K. Buch, J)**

Aakar